IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 121 OF 2005

Shri Vijay Radhakisan Kukadeja .. Appellant
V/s.
Kolhapur Municipal Corporation .. Respondent

Mr. N.V. Bandiwadekar for the Appellant
Mr. A.A. Kumbhakoni for the Respondent

CORAM : ABHAY S. OKA, J.
DATED : 20TH APRIL, 2005

P.C.:-

1. Heard the Advocates appearing for the parties. The following substantial question of law arises:-

> i. Whether the judgment of the Appellate Court is illegal on account of failure to frame proper points for determination under Order 41 Rule 31 of the Code of Civil Procedure Code, 1908 as due to failure of the Appellate Court to frame points for determination, prejudice has been caused to the Appellant?

2. Considering the facts and circumstances of the case, taken for hearing forthwith.

3. The Appellant is the Original Plaintiff. The dispute in this Suit is regarding increase in the quantum of rent by the Respondent Corporation in respect of the premises held by the Appellant Plaintiff. A Notice was issued on 4.3.1996 by the Respondent Corporation demanding the rent at enhanced rate. The Trial Court dismissed the Suit filed by the Appellant-Plaintiff. In the Trial Court reliefs were prayed by the Appellant-Plaintiff based on judgments and decrees passed in Regular Civil Suit No. 243 of 1997

and in other connected Suits, which were filed by other parties against the Respondent Corporation. A contention was raised that the challenge in the said Suits was to a resolution passed by the Respondent Corporation and in the present Suit filed by the Appellant, the same resolution is challenged.

4. The Appellate Court has framed only one point for determination, which is as under:-

> . Whether the Judgment and order passed by the learned Trial Judge needs interference at the hands of this Court?

5. Apart from other legal submissions, the learned Advocate appearing for the Appellants submitted that the appropriate points for determination were not framed. The contention of the Appellant is that effect of the judgments and decrees passed in Regular Civil Suit No. 243 of 1997 and other connected Suits are not considered by the Appellate Court. He submitted that the Appellate Court has not adverted to the reliefs claimed by the Appellant-Plaintiff in the Suit and without considering the reliefs claimed, the Appellate Court has erroneously applied the judgment of this Court reported in **1999 (1) Mh.L.J. 741 (Ulhasnagar Municipal Corporation v. M/s. Gulshan Contractors/Enterprises).**

6. Shri Kumbhakoni has supported the impugned judgment and order and submitted that an efficacious remedy under

the Bombay Provincial Municipal Corporations Act, 1949 is available to the Appellant.

7. On plain reading of the only point for determination framed by the Appellate Court, it is apparent that the Appellate Court has not performed it's duty of framing appropriate points for determination arising from in the Appeal. It is true that failure to frame points for determination by itself is not a ground to interfere with the judgment and order of the Appellate Court, however, perusal of the judgment of the Appellate Court shows that there is no consideration of all the contentions raised by the Appellant-Plaintiff. The Issue No. 7 framed by the Trial Court reads thus:-

7. Whether the decision in RCS No. 243/97, 345/97, 160/97 and 782/92 are binding on the Deft vis-a-vis the points in dispute in the present Suit?	Yes in respect of declaration about the resolutions impugned.

The Appellate Court has not at all considered the contentions of the parties based on the said issue. There is no indication in the judgment of the Appellate Court that the contention based on the said issue was not pressed by the Appellant.

8. Therefore, it is a case where a prejudice has been caused to the Appellant due to failure to frame appropriate points for determination arising in the Appeal. The Appellate Court was expected to frame appropriate points for determination. However, the Appellate Court framed only a general point for determination. The practice of framing such point is already deprecated by this Court in reported Judgments. Hence a case is made out for remanding the Appeal to the First Appellate Court.

9. Hence, I pass the following order:-

I. The impugned Judgment and Decree dated 19.10.2004 is quashed and set aside.

II. Regular Civil Appeal No. 29 of 1999 is restored to file.

III. Parties are directed to appear before the learned District Judge, Kolhapur on 6.6.2005 for fixing the date of hearing of the Appeal.

IV. The learned District Judge will decide the

Appeal after framing appropriate points for determination. The Appeal shall be decided as expeditiously as possible, preferably on or before 30.11.2005.

V. All contentions of the parties on merits of the Appeal are expressly kept open.

VI. If there was any interim relief operating during the pendancy of the Appeal before the First Appellate Court, the same will continue to operate till the disposal of the Appeal.

VII. The Appeal is partly allowed in above terms, no order as to costs.

VIII. Parties and the concerned Court to act on an authenticated copy of this order.

(JUDGE)